

CALIFORNIA BOARD OF ACCOUNTANCY REGULATIONS

CALIFORNIA CODE OF REGULATIONS TITLE 16. Professional and Vocational Regulations DIVISION 1. Board of Accountancy Regulations

ARTICLE 9. RULES OF PROFESSIONAL CONDUCT (Sections 50 - 69)

Section 50. Client Notification.

Every licensee engaged in the practice of public accountancy shall provide notice to the licensee's clients of the fact that the licensee is licensed by the Board of Accountancy. Notice shall be provided by any of the following methods:

- (a) Displaying his or her certificate of licensure issued by the Board in the office or the public area of the premises where the licensee provides the licensed service.
- (b) Providing a statement to each client to be signed and dated by the client and retained in that person's records that states the client understands the person is licensed by the Board of Accountancy.
- (c) Including a statement that the licensee is licensed by the Board of Accountancy either on letterhead or on a contract for services where the notice is placed immediately above the signature line for the client in at least 12 point type.
- (d) Posting a notice in a public area of the premises where the licensee provides the licensed services, in at least 48-point type, that states the named licensee is licensed by the Board of Accountancy.
- (e) Any other method of written notice, including a written notice that is electronically transmitted or a written notice posted at an Internet Website, which is reasonably calculated to be received by the licensee's clients.

NOTE: Authority cited: Sections 5010 and 5081, Business and Professions Code.
Reference: Section 138, Business and Professions Code.

HISTORY:

1. New section filed 5-10-2000; operative 6-9-2000 (Register 2000, No. 19).

Section 51. Firms with Nonlicensee Owners.

At initial registration and at renewal, all firms shall certify that any nonlicensee owner with his or her principal place of business in this state has been informed regarding the rules of professional conduct applicable to accountancy firms. This certification shall be signed by a licensed partner or licensed shareholder of the firm.

NOTE: Authority cited: Sections 5010, 5018 and 5079, Business and Professions Code.
Reference: Section 5079, Business and Professions Code.

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HISTORY:

1. New section filed 7-22-99; operative 8-21-99 (Register 99, No. 30).

Section 52. Response to Board Inquiry.

A licensee shall respond to any inquiry by the Board or its appointed representatives. The response shall include making available all files, working papers and other documents requested. Failure to respond to the inquiry within 30 days constitutes a violation of Section 5100(f) of the Accountancy Act. Any inquiry by the Board requiring a response pursuant to this section shall be in writing. The 30-day response period begins when the inquiry is mailed to the licensee, or if not mailed, when personally delivered.

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code.

Reference: Section 5018, Business and Professions Code.

HISTORY:

1. Renumbering of form section 54.1 to new section 52 and amendment of section heading filed 8-4-95, operative 9-3-95 (Register 95, No. 31).

Section 52.1. Failure to Appear.

Willful failure or refusal by a licensee to comply with a written notice of the Board, the Administrative Committee, or any other designated committee to appear in person constitutes a violation of Section 5100(f) of the Accountancy Act. The written notice shall be delivered not less than 10 working days in advance of the appearance. No licensee shall be required to travel further than the distance to the closest Board or Committee meeting scheduled within 4 months of the date of the notice. Licensees who fail to appear will be required to appear at the next regularly scheduled meeting of the Board or Committee. The written notice shall specify the place of such appearance.

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code.

Reference: Sections 5018 and 5020, Business and Professions Code.

HISTORY:

1. Renumbering and amendment of former section 69.1 To new section 52.1 And amendment of note filed 8-4-95; operative 9-3-95 (register 95, no. 31).

Section 53. Discrimination Prohibited.

No licensee or registrant shall engage in any conduct or practice which shall deny any person an opportunity or benefit of employment within the accounting profession based on race, color, religious creed, national origin, ancestry, physical handicap, sex, marital status, sexual orientation or age.

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NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code. Reference: Section 5018, Business and Professions Code.

HISTORY:

1. New section filed 6-8-81; effective thirtieth day thereafter (Register 81, No. 24).

Section 54. Confidential Information Defined, Exception.

"Confidential information" includes all information obtained by a licensee, in his or her professional capacity, concerning a client or a prospective client, except that it does not include information obtained from a prospective client who does not subsequently become a client, where all of the following conditions are met:

- (a) The licensee provides reasonable notice to the prospective client or the prospective client's representative that the information will not be treated as confidential information in the event the provider does not become a client and that providing such information will not preclude the licensee from being employed by a party adverse to the potential client in any current or future legal action or proceeding. For purposes of this section "reasonable notice" shall mean the following: (1) With respect to oral communications, including telephonic communications, reasonable notice consists of oral notice to the speaker given immediately by the licensee upon hearing that client information is being presented or will be presented. (2) With respect to written communications, including electronic and facsimile communications, reasonable notice consists of an oral or written notice to the sender within one business day.
- (b) The licensee, on request, returns the original and all copies of documents provided by the prospective client or his or her representative within 30 days.
- (c) The licensee does not utilize in any manner the information obtained, except that nothing shall prohibit the licensee from utilizing the same information obtained from an independent source such as through litigation discovery.

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code. Reference: Section 5018, Business and Professions Code.

HISTORY:

1. Sections 54-66, inclusive, filed 12-6-47 (Register 10, No. 5).
2. Amendment filed 10-17-62; effective thirtieth day thereafter (Register 62, No. 22).
3. Amendment filed 11-17-69; effective thirtieth day thereafter (Register 69, No. 47).
4. Amendment filed 2-14-75; effective thirtieth day thereafter (Register 75, No. 7).
5. Amendment filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16).
6. Amendment filed 1-5-90; operative 2-4-90 (Register 90, No. 3).
7. Renumbering of former section 54 to new section 54.1 and new section filed 8-4-95; operative 9-3-95 (Register 95, No. 31).

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Section 54.1. Disclosure of Confidential Information Prohibited.

No confidential information obtained by a licensee, in his or her professional capacity, concerning a client or a prospective client shall be disclosed by the licensee without the permission of the client or prospective client, except for the following:

- (a) disclosures made by a licensee in compliance with a subpoena or a summons enforceable by order of a court;
- (b) disclosures made by a licensee regarding a client or prospective client to the extent that the licensee reasonably believes that it is necessary to maintain or defend himself/herself in a legal proceeding initiated by that client or prospective client;
- (c) disclosures made by a licensee in response to an official inquiry from a federal or state government regulatory agency;
- (d) disclosures made by a licensee or a licensee's duly authorized representative to another licensee in connection with a proposed sale or merger of the licensee's professional practice;
- (e) disclosures made by a licensee to (1) another licensee to the extent necessary for purposes of professional consultation and to (2) professional standards review, ethics or quality control peer review organizations;
- (f) disclosures made when specifically required by law.

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code. Reference: Section 5018, Business and Professions Code.

HISTORY:

- 1. New section filed 1-5-90; operative 2-4-90 (Register 90, No. 3).
- 2. Editorial correction of printer error in HISTORY (Register 91, No. 30).
- 3. Editorial correction of reference cite (Register 95, No. 30).
- 4. Renumbering of former section 54.1 to new section 52, renumbering of former section 54 to 54.1 and amendment of section heading and first paragraph filed 8-4-95; operative 9-3-95 (Register 95, No. 31).
- 5. New subsection (b) and subsection relettering filed 11-20-98; operative 12-20-98 (Register 98, No. 47).

Section 54.2. Recipients of Confidential Information.

Members of the Board, its appointed representatives professional practice reviewers and other persons designated in section 54.1(d)-(f) shall not disclose information concerning licensees or their clients which comes to their attention in carrying out their professional responsibilities; provided, however, such information may be disclosed:

- (a) as part of disciplinary proceedings with the Board,
- (b) as part of legal actions in which the Board is a party,
- (c) in response to an official inquiry from a federal or state governmental regulatory agency,
- (d) in compliance with a subpoena or summons enforceable by order of a court, or
- (e) when otherwise specifically required by law.

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NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code. Reference: Section 5018, Business and Professions Code.

HISTORY:

1. New section filed 1-5-90; operative 2-4-90 (Register 90, No. 3).
2. Editorial correction of printing error in History (Register 91, No 30).
3. Editorial correction of Reference cite (Register 95, No. 30).
4. Amendment of first paragraph filed 8-4-95; operative 9-3-95 (Register 95, No. 31).
5. Amendment of first paragraph filed 11-20-98; operative 12-20-98 (Register 98, No. 47).

Section 55. Permission to Use Name.

A licensee shall not allow any person to practice in his or her name who is not a partner or an employee except as specified in Section 5059 of the Business and Professions Code.

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code. Reference: Sections 5010, 5018 and 5059, Business and Professions Code.

HISTORY:

1. Amendment filed 2-4-60; effective thirtieth day thereafter (Register 60, No. 3).
2. Amendment filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16).
3. Amendment filed 8-4-95; operative 9-3-95 (Register 95, No. 31).

Section 56. Commissions—Basic Disclosure Requirement.

(a) A licensee shall not accept any fee or commission permitted by Business and Professions Code Section 5061 unless he or she complies with the provisions of this section and Section 56.1.

(b) A licensee who may receive a fee or commission pursuant to Business and Professions Code Section 5061 shall furnish to the client, at or prior to the time the recommendation of the product or service is made, a written disclosure statement in 12 point type or larger that contains the following information:

(1) The fact that the fee or commission is to be paid for professional services and that a fee or commission cannot be accepted solely for the referral of the client to the products or services of a third party.

(2) A description of the product(s) or service(s) which the licensee is recommending to the client, the identity of the third party that is expected to provide the product or service, the business relationship of the licensee to the third party, a description of any fee or commission which may be received by the licensee, including, but not limited to, any supplemental fee or commission or other compensation allocable to the client being provided with the product or service of the third party. Where the product(s) or service(s) cannot be specifically identified

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at the time of the initial disclosure, this information shall be included in a supplemental disclosure within 30 days of receipt of the fee or commission.

(3) The dollar amount or value of the fee or commission payment(s) or the basis on which the payment(s) shall be computed.

(c) The written disclosure shall be on letterhead of the licensed firm or shall be signed by the licensee. The disclosure statement shall be signed and dated by the client and contain an acknowledgment by the client that the client has read and understands the information contained in the disclosure. Supplemental disclosures as described in subsection (b)(2) of Section 56 need not be signed by the client or by the licensee. The licensee shall retain the disclosure statements for a period of five years and shall provide copies to the client.

NOTE: Authority cited: Section 5010, 5018 and 5061, Business and Professions Code.
Reference: Section 5061, Business and Professions Code.

HISTORY:

1. New section filed 1-7-99; operative 1-7-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 2). For prior history, see Register 95, No. 31.

Section 56.1. Commissions—Professional Services Provided to the Client.

The professional services which must be provided to the client in conjunction with the products or services of a third party under Business and Professions Code Section 5061(b) shall include consultation with the client regarding the third party's product or service in relation to the client's circumstances.

NOTE: Authority cited: Section 5010, 5018 and 5061, Business and Professions Code.
Reference: Section 5061, Business and Professions Code.

HISTORY:

1. New section filed 1-7-99; operative 1-7-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 2).

Section 56.2. Commissions—Disclosure Requirement and Other Rules of Professional Conduct.

Nothing in Section 56 permits a licensee either (1) to accept any fee or commission which would violate the requirement that a licensee be independent in the performance of services in accordance with professional standards (Section 65) or (2) to concurrently engage in the practice of public accountancy and in any other business or occupation which impairs the licensee's independence, objectivity, or creates a conflict of interest in rendering professional services (Section 57). However, the act of a licensee taking a fee or commission as permitted by Business and Professions Code Section 5061 and in conformity with Section 56 does not, by itself, constitute an impairment of a licensee's objectivity or create a conflict of interest in rendering professional services.

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NOTE: Authority cited: Section 5010, 5018 and 5061, Business and Professions Code.
Reference: Sections 5018 and 5061, Business and Professions Code.

HISTORY:

1. New section filed 1-7-99; operative 1-7-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 2).

Section 56.3. Commissions—Definitions.

For purposes of Sections 56, 56.1, and 56.2 of the Board's regulations the following definitions apply:

(a) "Licensee" means a Certified Public Accountant, Public Accountant, or firm licensed by the Board of Accountancy, including a firm with nonlicensee owners, that is engaged in the practice of public accountancy as defined by Business and Professions Code Section 5051.

(b) The term "a third party" means all persons other than the licensee, the licensee's client, and any licensee firm of which the licensee is an employee, partner, or owner.

(c) "The basis on which the payment(s) shall be computed" shall be a formula which can be used to calculate the dollar amount or value of the fee or commission once the dollar amount or value of the transaction is known.

NOTE: Authority cited: Section 5010, 5018 and 5061, Business and Professions Code.
Reference: Section 5061, Business and Professions Code.

HISTORY:

1. New section filed 1-7-99; operative 1-7-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 2).

Section 57. Incompatible Occupations/Conflict of Interest.

A licensee shall not concurrently engage in the practice of public accountancy and in any other business or occupation which impairs the licensee's independence, objectivity, or creates a conflict of interest in rendering professional services.

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code. Reference: Section 5018, Business and Professions Code.

HISTORY:

1. Amendment filed 2-14-75; effective thirtieth day thereafter (Register 75, No. 7).
2. Amendment filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16).

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Section 58. Compliance With Standards.

Licensees engaged in the practice of public accountancy shall comply with all applicable professional standards, including but not limited to generally accepted accounting principles and generally accepted auditing standards.

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code. Reference: Sections 5010 and 5018, Business and Professions Code.

HISTORY:

1. New section filed 10-9-79; effective thirtieth day thereafter (Register 79, No. 41). For prior history, see Registers 68, No. 38; 66, No. 1; 61, No. 22; 20, No. 6; and 10, No. 5.
2. Amendment of section heading and section filed 8-4-95; operative 9-3-95 (Register 95, No 31).

Section 62. Contingent Fees.

- (a) A licensee shall not:
- (1) Perform for a contingent fee any professional services for, or receive such a fee from, a client for whom the licensee or the licensee's firm performs:
 - (A) an audit or review of a financial statement; or
 - (B) a compilation of a financial statement when the licensee expects or reasonably should expect that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence; or
 - (C) an examination of prospective financial information; or
 - (D) any other attest engagement when the licensee expects or reasonably should expect that a third party will use the related attestation report; or
 - (E) any other services requiring independence.
 - (2) Prepare an original tax return for a contingent fee for any client.
 - (3) Prepare an amended tax return, claim for tax refund, or perform other similar tax services for a contingent fee for any client.
 - (4) Perform an engagement as a testifying expert for a contingent fee.

The prohibition in (a)(1) above applies during the period in which the licensee or the licensee's firm is engaged to perform any of the services listed under (a)(1) above and the period covered by any historical financial statements involved in any such listed services.

(b) Except as stated in the next paragraph, a contingent fee is a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specific finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service.

Solely for purposes of this section, fees are not regarded as being contingent if fixed by courts or governmental entities acting in a judicial or regulatory capacity, or in tax matters if determined based upon the results of judicial proceedings or the findings of governmental agencies acting in a judicial or regulatory capacity or there is a reasonable expectation of substantive review by a taxing authority.

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NOTE: Authority cited: Section 5010 and 5018, Business and Professions Code.
Reference: Section 5010 and 5018, Business and Professions Code.

HISTORY:

1. Amendment filed 2-14-75; effective thirtieth day thereafter (Register 75, No. 7).
2. Amendment filed 11-20-96; effective on filing (Register 96, No.47).

Section 63. Advertising.

A licensee shall not advertise or use other forms of solicitation in any manner which is false, fraudulent, misleading, or in violation of Section 17500 of the Business and Professions Code.

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code.
Reference: Section 5100, Business and Professions Code.

HISTORY:

1. New section filed 12-6-47; effective thirtieth day thereafter (Register 10, No. 5).
2. Amendment filed 8-17-49; effective thirtieth day thereafter (Register 17, No. 4).
3. Amendment filed 8-17-77; effective thirtieth day thereafter (Register 77, No. 34).
4. Amendment of section and new Note filed 8-4-95, operative 9-3-95 (Register 95, No 31).

Section 65. Independence.

A licensee shall be independent in the performance of services in accordance with professional standards.

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code. Reference: Sections 5010 and 5018, Business and Professions Code.

HISTORY:

1. Repealer and new section filed 3-24-65; effective thirtieth day thereafter (Register 65, No. 5).
2. Amendment filed 2-14-75; effective thirtieth day thereafter (Register 75, No. 7).
3. Amendment filed 10-9-79; effective thirtieth day thereafter (Register 79, No. 41).
4. Amendment filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16).
5. Repealer and new section filed 8-4-95; operative 9-3-95 (Register 95, No 31).

Section 67. Approval of Use of Fictitious Name.

No sole proprietor may practice under a name other than the name set forth on his or her permit to practice unless such name has been registered with the Board. Any registration

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issued under this section shall expire five years after the date of issuance unless renewed prior to its expiration.

NOTE: Authority cited: Sections 5010, 5018 and 5060, Business and Professions Code.
Reference: Section 5060, Business and Professions Code.

HISTORY:

1. New section filed 7-10-64; effective thirtieth day thereafter (Register 64, No. 15).
2. Amendment filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16).
3. Amendment filed 9-23-91; operative 10-23-91 (Register 91, No. 52).
4. Amendment of section and Note filed 5-10-2000; operative 6-9-2000 (Register 2000, No. 19).

Section 68. Retention of Client's Records.

A licensee, after demand by or on behalf of a client, for books, records or other data, whether in written or machine sensible form, that are the client's records shall not retain such records. Unpaid fees do not constitute justification for retention of client records.

Although, in general the accountant's working papers are the property of the licensee, if such working papers include records which would ordinarily constitute part of the client's books and records and are not otherwise available to the client, then the information on those working papers must be treated the same as if it were part of the client's books and records.

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code. Reference: Section 5037, Business and Professions Code.

HISTORY:

1. New section filed 2-14-75; effective thirtieth day thereafter (Register 75, No. 7).
2. Amendment filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16).
3. Amendment filed 8-4-95, operative 9-3-95 (Register 95, No. 31).

Section 68.1. Working Papers Defined; Retention.

(a) Working papers are the licensee's records of the procedures applied, the tests performed, the information obtained and the pertinent conclusions reached in an audit, review, compilation, tax, special report or other engagement. They include, but are not limited to, audit of other programs, analyses, memoranda, letters of confirmation and representations, abstracts of company documents and schedules or commentaries prepared or obtained by the licensee. The form of working papers may be handwriting, typewriting, printing, photocopying, photographing, computer, data, or any other letters, words, pictures, sounds, or symbols or combinations thereof.

(b) Licensees shall adopt reasonable procedures for the safe custody of working papers and shall retain working papers for a period sufficient to meet the needs of the licensee's

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practice and to satisfy applicable professional standards and pertinent legal requirements for record retention.

(c) Licensees shall retain working papers during the pendency of any Board investigation, disciplinary action, or other legal action involving the licensee. Licensees shall not dispose of such working papers until notified in writing by the Board of the closure of the investigation or until final disposition of the legal action or proceeding if no Board investigation is pending.

NOTE: Authority Cited: Section 5010 and 5018, Business and Professions Code.
Reference: Section 5018 and 5037, Business and Professions Code.

HISTORY:

1. New section filed 2-26-96; operative 3-27-96 (Register 96, No 9).

Section 69. Certification of Applicant's Experience.

(a) Any licensee who shall have been requested by an applicant to prepare and submit to the board certification of the applicant's experience and shall have refused to prepare and submit said certification shall, when requested by the board, explain in writing, or, when so requested by the board, explain in person, the basis for refusal to complete and submit said certification.

(b) Any licensee who shall have signed a certification of experience shall, when requested by the board, explain in writing, or, when so requested by the board, explain in person, the information provided on any said certification of experience, in any situation including, but not limited to, the following:

(1) Where there is an alleged disagreement between an applicant and any licensee as to dates and/or type of work performed;

(2) Where there is satisfactorily answered certification of experience submitted to the board, but the period of experience appears to be unduly short;

(3) Where the board seeks to verify on a sample basis information submitted by an applicant or attested thereto on a certification of experience; or

(4) Where the board reasonably believes that the information in the certification of experience may be false or incorrect.

(c) Any false or misleading statement, made by a licensee as to material matters in the certification of an applicant's experience, shall constitute a violation of Section 5100 (f) of the Accountancy Act.

(d) Inspection by the board or its representatives of documentation relating to an applicant's fulfillment of the experience requirements set forth in Section 5083 of the Accountancy Act and Rule 11.5 herein above may be made at any of the board's offices or at such other places as the board may designate.

(e) The failure or refusal, by any licensee to complete and submit a certification of experience or to comply with a request for explanation of said certification or inspection of documentation as set forth in this rule constitutes a violation of Section 5100 (f) of the Accountancy Act.

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(f) Any unreasonable act or failure to act which jeopardizes an applicant's chances for obtaining a certificate, shall constitute a violation of Section 5100 (f) of the Accountancy Act.

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code. Reference: Sections 5010, 5018 and 5100, Business and Professions Code.

HISTORY:

1. New section filed 10-21-77; effective thirtieth day thereafter (Register 77, No. 43).
2. Amendment filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16).